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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

KATRINA ADRIANE WARREN,

Defendant and Appellant.

C085116

(Super. Ct. No. 16FE001015)

Defendant Katrina Adriane Warren was granted probation after a jury found her guilty of counts including driving under the influence. On appeal, she challenges two of her probation conditions: (1) that she “follow in all respects any reasonable instructions given to you by the Probation Officer having your supervision,” and (2) that she “not associate with persons he or she knows to be illegal users or sellers of marijuana, dangerous drugs or narcotics, nor be in places where he or she knows illegal narcotics and/or dangerous drugs are present.” We will modify the latter condition and otherwise affirm.

BACKGROUND

Defendant was found guilty by jury of driving under the influence (DUI) (Veh. Code, § 23152, subd. (a)) and driving with a .08 percent blood-alcohol (Veh. Code, § 23152, subd. (b)). The trial court separately found she had suffered three prior DUI convictions.

A probation report was prepared for sentencing. It recommended probation along with numerous proposed probation conditions, including: “You are to follow in all respects any reasonable instructions given to you by the Probation Officer having your supervision.” It also required that she “not associate with persons he or she knows to be illegal users or sellers of marijuana, dangerous drugs or narcotics, nor be in places where he or she knows illegal narcotics and/or dangerous drugs are present.”

At sentencing, the trial court granted probation and ordered defendant to serve 180 days in jail. The court then asked: “Have you reviewed each and every term, condition, fines and fees of probation contained in this report with your client?” Defendant and her counsel both answered yes. Defendant then answered yes when asked if she understood and accepted the terms, conditions, fines, and fees.

DISCUSSION

I

The condition to follow “any reasonable instructions” from the probation officer

On appeal, defendant first challenges the condition that she “follow in all respects any reasonable instructions given to you by the Probation Officer having your supervision.” She contends it improperly delegates judicial decision-making power to the probation officer. She avers the trial court neither reserved discretion for itself nor set boundaries for the challenged condition. As such, nothing requires the probation officer’s directives to be reasonably related to the imposed probation conditions. Rather probation could decide what “any reasonable instruction” would be—essentially allowing the creation of additional probation conditions. She likewise contends the condition is

unconstitutionally vague and overbroad in that it allows probation unlimited authority to order her to follow directions, even wholly unrelated to her probation terms. We disagree.¹

A similar challenge to the probation condition “ ‘[f]ollow such course of conduct as the probation officer may prescribe’ ” was rejected in *People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240-1241 (*Kwizera*). There, the appellate court noted under Penal Code sections 1202.8 and 1203, “the court sets conditions of probation and the probation officer supervises compliance with the conditions.” (*Kwizera*, at p. 1240.) As such, the trial court has the power and responsibility to impose conditions such as drug testing and reporting obligations. (*Ibid.*) In order to supervise compliance with such conditions, the probation department must have authority to set the time and place for administering tests or reporting to probation. (*Ibid.*) In *Kwizera*’s case, the challenged condition was “reasonable and necessary to enable the department to supervise compliance with the specific conditions of probation.” (*Ibid.*) The court added, the condition “does no more.” (*Ibid.*) Further, because the trial court lacks power to impose unreasonable probation conditions, it could not authorize a probation officer to do so through the challenged condition. (*Ibid.*)

We find the reasoning in *Kwizera* persuasive. Here, in addition to the challenged probation condition, the trial court ordered defendant to participate in a drug and alcohol program; to submit to chemical testing of blood, breath, or urine; and to report to probation, as directed by her probation officer. The condition to “follow in all respects

¹ The People maintain the challenge is forfeited for failure to object below. But because defendant raises a facial challenge to the condition’s constitutionality, the challenge is preserved. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 885 [reaching a facial challenge that a condition is unconstitutionally vague despite the failure to object below]; *In re R.S.* (2017) 11 Cal.App.5th 239, 243 [“Constitutional challenges to probation conditions on their face, however, may be raised on appeal without objection in the court below”], review granted July 26, 2017, S242387.)

any reasonable instructions . . .” empowers probation to enforce those conditions—and nothing more. It does not, as defendant maintains, authorize the probation officer to determine reasonable probation conditions. (See *Kwizera, supra*, 78 Cal.App.4th at pp. 1240-1241 [the condition “does not . . . [citation] . . . authorize the probation officer to irrationally tell a defendant ‘to jump’ ”].)

Defendant’s reliance on cases in which the trial court improperly delegated authority is of no help. (See *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1371 [“juvenile court specified that visitation shall be ‘consistent with the well-being of the minor[s], and at the discretion of Child Protective Services as to the time, place, and manner’ ”]; *In re Shawna M.* (1993) 19 Cal.App.4th 1686, 1688 [“ordered that supervised visitation be permitted ‘with visitation to be arranged through, and approved by, the San Benito County Human Services Agency’ ”]; *People v. Cervantes* (1984) 154 Cal.App.3d 353, 356 [court imposed condition that the defendant “ ‘pay restitution in an amount and manner to be determined by the Probation Officer’ ”].) In each of those cases, the trial court delegated away authority vested with the court. But here, again, the challenged condition did not delegate the court’s authority but simply empowered probation to enforce conditions imposed by the court.

Similarly, because the challenged condition only empowers probation to enforce the imposed conditions, it is neither unconstitutionally vague nor overbroad. (See *People v. Olguin* (2008) 45 Cal.4th 375, 380-381 citing *Kwizera, supra*, 78 Cal.App.4th at p. 1240 [“A condition of probation that enables a probation officer to supervise his or her charges effectively is . . . ‘reasonably related to future criminality’ ”].)

II

The condition pertaining to “dangerous drugs”

Defendant next challenges, as unconstitutionally vague and overbroad, the condition requiring that she “not associate with persons he or she knows to be illegal users or sellers of marijuana, dangerous drugs or narcotics, nor be in places where he or

she knows illegal narcotics and/or dangerous drugs are present.” She argues the term “dangerous drugs” is not sufficiently precise for her to know what is required of her. She questions if it includes lawful over-the-counter drugs that are dangerous if used in sufficient quantities or lawfully prescribed prescription drugs kept in a place where defendant might be. We agree.²

The term “dangerous drugs” is open to interpretation. To avoid confusion, we will modify the condition to replace the term “dangerous drugs” with “controlled substances.” (See *People v. Orozco* (2012) 209 Cal.App.4th 726, 733 [noting the California Uniform Controlled Substances Act replaced the term “restricted dangerous drugs” with the more comprehensive term, “controlled substances”].)

DISPOSITION

The challenged probation condition is modified to provide as follows: “Defendant not associate with persons he or she knows to be illegal users or sellers of marijuana, controlled substances, or narcotics, nor be in places where he or she knows illegal narcotics and/or controlled substances are present.” As modified, the judgment is affirmed.

RAYE, P. J.

We concur:

BLEASE, J.

BUTZ, J.

² The challenge to this condition is also preserved. (See *People v. Nice* (2016) 247 Cal.App.4th 928, 945 [challenge to probation condition involving illegal drugs not forfeited “because the issues presented can be resolved as a matter of law without reference to the sentencing record in the trial court”].)